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ARTICLE VI. - USE OR DISPOSITION OF PUBLIC RIGHTS-OF-WAY

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Sec. 16-100. - Definitions.

[The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Director is defined as the director of public works.

Encroachment means any intrusion from adjacent private property into or over city right-of-way.

Petition is defined as a written request by a petitioner for rights or privileges under this article. The petition must be in letter form and must state the location of the affected public right-of-way and the purpose and scope of the proposed use or disposition of such public right-of-way. The petition must further include such attachments and detail as the director may require.

Petitioner is defined as a person requesting a right or privilege governed by this article. More than one (1) person may combine as one (1) petitioner, but in such case each is jointly and severally liable for the obligations of the petitioner.

Public right-of-way is defined as any area subject to a public utility, drainage or other easement, and all public streets, roads, alleys, sidewalks, and other similar passageways, thoroughfares and public ways within the city, whether improved or not, and which are held by fee simple title or by dedication to the public.

(Ord. No. 1750-A, § 5, 1-28-08; Ord. No. 1927, 4-9-12)

Sec. 16-101. - General provisions.

- (a) No person shall use public rights-of-way in a way governed by this article without acquiring rights under the relevant section. To acquire rights under this article, a petitioner must submit a petition to the director of public works and follow the procedures prescribed by the director.
- (b)

The director of public works shall require recording of any instruments granting rights under this article in the Official Public Records of Real Property of Bexar County. The petitioner shall pay the cost of recording such instruments.

- (c) The director of public works is authorized to approve permits for encroachments, as set out herein, or for rights-of-entry under this article without city council action if the permitted use conforms to the requirements of this article.
- (d) Only the city council may approve: 1) licenses to use public rights-of-way, 2) closure, vacation and abandonment of public rights-of-way, 3) granting or releasing of easements on public rights-of-way, or 4) renewal, continuation or termination of any rights previously granted by the city council.
- (e) Permits issued by the director of public works shall have an indefinite duration but may be terminated by city council action. Licenses granted by the city council shall have stated durations and shall be terminable according to their terms.
- (f) All construction, excavation and placement of any facilities in public rights-of-way and easements are subject to regulation by the director of public works.
- (g) When fair market value is required by this article, the city may, at its option, rely on an average of the per-square-foot Bexar Appraisal District market values in the vicinity of the property in question, or the city may require that an independent professional appraisal be obtained. The petitioner and the city shall jointly select the appraiser, if they can agree. If they cannot agree, the city shall select the appraiser. In either case, the petitioner shall pay for the appraisal.
- (h) Persons receiving rights under this article shall maintain in good repair and condition any encroachment such as a structure, covering, or appurtenance and the accompanying structural members extending over, under or on any public right-of-way. No such encroachment shall be a nuisance or safety hazard of any kind. All such encroachments, when constructed or renovated, shall conform to the latest city building codes, as appropriate.
- (i) By accepting rights under this article, the petitioner agrees to indemnify the city against all loss, cost, liability, or expense arising from or relating to the city's granting of the rights or petitioner's exercise of them. This section establishes the indemnity whether or not the petitioner's agreement with the city so provides, and can only be overridden by specific action of the city council. Entities that may not lawfully grant indemnities or may not be lawfully required to do so by the city are not required to grant the indemnity provided for in this section. Further, any indemnity provided hereunder specifically covers the city's own negligence.
- (j) Grants of rights under this article do not relieve the petitioner of any other approvals, permits or licenses that may otherwise be required.
- (k) Before the director of public works grants a permit or recommends the granting of rights by the city council under this article, the director shall canvass any interested city department, utility agencies or other entities that may have facilities in the public rights-of-way. Based on comments received, the director may impose, or recommend that the city council impose, special terms as a condition of a permit issued by the director or for granting of rights by the city council.

(Ord. No. 1750-A, § 5, 1-28-08)

Sec. 16-102. - Rights-of-entry.

- (a)

Petitions for rights-of-entry onto public rights-of-way for minimally invasive work such as surveying, measuring, testing or accessing other property shall be submitted to the director of public works. The director shall process such requests and shall establish any appropriate forms and procedures to implement this section.

- (b) The director shall grant such rights in writing on a form acceptable to the city attorney.

(Ord. No. 1750-A, § 5, 1-28-08)

Sec. 16-103. - Permits for encroachments into city right-of-way.

- (a) Permits for encroachments into city right-of-way shall be submitted to the director of planning and development services, and shall be accompanied by a non-refundable, one hundred fifty dollar (\$150.00) processing fee. The director shall process permit requests and shall establish forms and procedures to implement this section. Permits for encroachments into city right-of-way shall be issued by the director to the owner of such property that abuts the public right-of-way to be encroached upon.
- (b) Permits for encroachments into city right-of-way may be issued by the director are:
- (1) Awnings, canopies, or similar coverings designed to provide shade to pedestrians;
 - (2) Retaining walls parallel to the street (for the purpose of soil retention)
 - (3) Sidewalks or drop off areas (if greater than ten (10) feet in length)
 - (4) Building features required by city code, such as fire escapes or disability access ramps that extend past property lines;
 - (5) Utility vaults;
 - (6) Minor encroachments on an area reserved for drainage, if the director deems the proposed encroachment does not interfere with drainage. Such encroachments include access bridges, roof overhangs and private utility lines used only by the abutting property owner;
 - (7) A private driveway from the edge of a street surface to the right-of-way line is not an encroachment covered by this section; and,
 - (8) Permits for encroachments that would, in the director's opinion, materially affect the city's use of its rights-of-way, shall not be granted by the director.
- (c) The director may specify the construction, characteristics, quality and placement of allowable encroachments. The director may further require relocation or removal of an encroachment, upon thirty (30) calendar day notice to the permittee, when appropriate for the efficient use by the city of its right-of-way. Permittee shall be responsible for the costs associated with such relocation or removal of the encroachment.
- (d) In the case of utility vaults, the applicant will provide notice to all property owners on the same block (which means property owners on both sides of the street) on a form provided by the city and will provide proof of notification about the request for this permit before the permit will be issued.

(Ord. No. 1927, 4-9-12)

Editor's note—

Ord. No. 1927, adopted April 9, 2012, repealed the former § 16-103 and enacted a new § 16-103 as set out herein. The former § 16-103 pertained to permits for abutting-property-encroachments and derived from Ord. No. 1750-A, § 5, adopted Jan. 28, 2008.

Sec. 16-104. - Licenses to use city rights-of-way or easements.

- (a)

Petitions for licenses to use public rights-of-way for encroachments for private purposes in a manner that 1) encloses such rights-of-way, 2) inordinately occupies such rights-of-way or 3) is of a structural nature, shall be submitted to the director of public works, and shall be accompanied by a non-refundable five hundred dollar (\$500.00) processing fee for each petition. The director shall process such petitions and shall establish any appropriate forms and procedures to implement this section.

- (b) Prior to city council consideration of the request for a license, the director shall first give fourteen (14) days written notice, by U.S. Mail, to all property owners within two hundred (200) feet of the requested encroachment, and publish such notice in the official newspaper of the city. Public consideration of, and action on, the requested encroachment will be made at the city council meeting designated in the notice. The city council may authorize or deny issuance of a license to the petitioner for the requested encroachment.
- (c) Encroachments for which a license may be authorized by the city council include, but are not limited to:
 - (1) Parking pads or parking courts;
 - (2) Fences or walls that enclose city rights-of-way or easements;
 - (3) Private property entry features such as gates and walls;
 - (4) Structures such as accessory buildings or pools;
 - (5) Paving an alley for private access; or,
 - (6) A private driveway from the edge of a street surface to the right-of-way line is not an encroachment covered by this section.
- (d) The fee for a five (5) year license to use public rights-of-way or easements is the greater of two thousand dollars (\$2,000.00) or ten (10) percent of the fair market value of the area of such land to be occupied by the encroachment, the value of which shall be determined in accordance with [section 16-101\(g\)](#).
- (e) The director shall require the petitioner to sign and deliver to the city an agreement setting out the applicable license fee and such conditions as may be imposed by the city council, upon recommendation of the director, that are necessary to protect the city's use of its right-of-way.

The agreement shall be executed by the mayor on behalf of the city.
- (f) Licenses granted hereunder may be renewed by the city council at the end of each five-year term for the greater of two thousand dollars (\$2,000.00) or ten (10) percent of the fair market value of the land occupied by the encroachment at the time of renewal, the value of which shall be determined in accordance with [section 16-101\(g\)](#). If the license fee has been modified by the city council since the issuance of a prior license, the new license shall be based on the modified rate then in effect.

(Ord. No. 1750-A, § 5, 1-28-08)

Sec. 16-105. - Closure, vacation and abandonment of public rights-of-way.

- (a) Petitions for closure, vacation and abandonment of public rights-of-way shall be submitted to the director of public works and shall be accompanied by a non-refundable five hundred dollar (\$500.00) processing fee. The director shall process such requests and shall establish forms and procedures to carry out this section.
- (b) The petitioner shall include the following information with his petition:
 - (1) From the owners of all property which abuts the public right-of-way to be closed, vacated and abandoned, a signed and acknowledged written 1) approval of the

- petition for closure, vacation and abandonment, and 2) release of any interest they have in the public right-of-way requested to be closed, vacated and abandoned.
- (2) A signed and acknowledged written consent and release of all future claims and damages from the owners of all property to which access would be materially and substantially impaired if the requested closure, vacation and abandonment is granted.
 - (3) A title report issued by a title insurance company acceptable to the city identifying the abutting property ownerships;
 - (4) A survey, performed by a registered land surveyor duly licensed in the State of Texas, which shows the public right-of-way to be closed, abandoned and vacated, as well as the division of the public right-of-way between the abutting property owners according to the proportion of their abutting ownership.
- (c) No public right-of-way shall be closed, vacated and abandoned unless the city council determines in an abandoning ordinance that closure, vacation and abandonment is in the public interest, and that all requirements of this section and other applicable ordinances and laws are satisfied. Whenever a public right-of-way is closed, vacated and abandoned, the abandoning ordinance shall provide that the public right-of-way to be abandoned shall be sold or revert to the abutting property owners in proportion to their abutting ownership, unless such owners otherwise have released their interest in the abandoned public right-of-way as provided in subsection (b) above.
- (d) Prior to an abandonment ordinance being considered by the city council, the following shall occur:
- (1) The director of public works shall cause the planning and zoning commission to consider the requested abandonment in accordance with the commission's usual process for hearing cases, and to issue a recommendation to the city council; and,
 - (2) A public hearing shall be held by the city council after twenty-one (21) calendar days written notice, by U.S. Mail, is given to all property owners within two hundred (200) feet of the requested abandonment, and such notice is published in the official newspaper of the city.
 - (3) The city council shall consider the recommendation of the planning and zoning commission regarding the requested abandonment.
- (e) The abandoning ordinance shall further provide that in consideration of the foregoing requirements and upon receipt from the petitioner of the fair market value of the public right-of-way to be abandoned as determined in accordance with [section 16-101\(g\)](#), unless a donation is allowed under Local Government Code § 272.001, such public right-of-way shall revert to the abutting property owners in proportion to their abutting ownership, unless released as provided in subsection (b) above, as shown by a title report of current date which has been paid for by the petitioner and issued by a title company acceptable to the city. The ordinance shall provide for an equitable manner of determining the division between the abutting property owners. Such ordinance shall further provide that the Mayor shall be authorized to execute a deed without warranty conveying such abandoned public right-of-way to the abutting property owners in proportion to their abutting ownership as shown in the title report and with the division between the owners in the equitable manner as specified in such ordinance. The deed without warranty shall contain all reservations and exceptions shown in the title report, and the following shall be reservations from and exceptions to the conveyance in such deeds: All restrictions, covenants, conditions, easements, rights-of-way and prescriptive rights, whether recorded or not, all recorded reservations, if any, existing utilities, zoning and other laws affecting the city property to be abandoned, and any other conditions that may be imposed by the city council. If the city council determines that it is

necessary to the public interest, utility easements may be reserved over, across and under the property to be abandoned, and such reservation of easements shall be shown on the deed without warranty. If such reservation is made, an appropriate reduction will be made to the fair market value of the land to be conveyed.

- (f) The abandoning ordinance shall further provide that in accordance with § 253.001 of the Local Government Code, the proceeds of any sale or donation of abandoned parts of public rights-of-way shall be used only for the acquisition and improvement of property for the same uses as that sold.
- (g) The abandoning ordinance shall be recorded by the petitioner in accordance with [section 16-101\(b\)](#).

(Ord. No. 1750-A, § 5, 1-28-08)

Sec. 16-106. - Releasing or granting easements.

- (a) A petition for releasing existing city easements, or granting new easements on public rights-of-way, shall be submitted to the director of public works, along with a non-refundable five hundred dollar (\$500.00) processing fee. The director shall require the petitioner to demonstrate that the city has an interest in the public right-of-way upon which an easement is being requested for release or granting thereof. The director shall establish forms and procedures to implement this section.
- (b) The director shall consider the request for releasing or granting an easement, and shall forward such request for action by the city council, along with the director's recommendation of approval or denial.
- (c) If the petitioner's request is approved by the city council, the fee for releasing or granting an easement shall be the fair market value of the property burdened by the easement, appraised as if the easement did not exist, and shall be determined in accordance with subsection [16-101\(g\)](#).
- (d) The requested granting of an easement or release of an easement shall be executed by the mayor on an appropriate form provided by the city attorney, and shall set out any conditions on the release or granting of the easement that may be imposed by the city council.
- (e) Easements shall not be granted when they are inconsistent with the city's use or planned use of the affected public right-of-way, and can only be released, granted or have the terms thereof amended by approval of the city council.
- (f) All easements granted hereunder are revocable by the city council.

(Ord. No. 1750-A, § 5, 1-28-08)

Sec. 16-107. - Exceptions.

The procedures stated herein above do not apply to the sale, conveyance or exchange of land owned or held by the city, which is not made under the exemptions in § 272.001, and for which the bidding requirements of § 272.001 of the Local Government Code apply.

(Ord. No. 1750-A, § 5, 1-28-08)

Secs. 16-108—16-149. - Reserved.